

CENTER FOR DISABILITY ACCESS  
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

**Chris Langer,**

Plaintiff,

v.

**Sabri Shamoun**, in individual and  
representative capacity as trustee of  
the Shamoun Family Trust (10-23-  
96);

**Mary S. Shamoun**, in individual  
and representative capacity as trustee  
of the Shamoun Family Trust (10-  
23-96);

**OB Quik Stop, Inc.**, a California  
Corporation; and Does 1-10,

Defendants.

**Case No. '14CV1822 LAB BLM**

**Complaint For Damages And  
Injunctive Relief For Violations  
Of: American's With Disabilities  
Act; Unruh Civil Rights Act;  
California Disabled Persons Act;  
Negligence**

Plaintiff Chris Langer complains of Defendants Sabri Shamoun, in individual and representative capacity as trustee of the Shamoun Family Trust (10-23-96); Mary S. Shamoun, in individual and representative capacity as trustee of the Shamoun Family Trust (10-23-96); OB Quik Stop, Inc., a California Corporation; and Does 1-10 ("Defendants") and alleges as follows:

**PARTIES:**

1. Plaintiff is a California resident with physical disabilities. He is a paraplegic who cannot walk and who uses a wheelchair for mobility. He has a specially equipped van with a ramp that deploys out of the passenger side of his van and he has a Disabled Person Parking Placard issued to him by the State of California.

2. Defendants are, or were at the time of the incidents, the real property owners, business operators, lessors and/or lessees for the OB Quik Liquor store ("Store") located at or about 4984 Voltaire Street, San Diego, California.

3. Plaintiff does not know the true names of Defendants, their business capacities, their ownership connection to the property and business, or their relative responsibilities in causing the access violations herein complained of, and alleges a joint venture and common enterprise by all such Defendants. Plaintiff is informed and believes that each of the Defendants herein, including Does 1 through 10, inclusive, is responsible in some capacity for the events herein alleged, or is a necessary party for obtaining appropriate relief. Plaintiff will seek leave to amend when the true names, capacities, connections, and responsibilities of the Defendants and Does 1 through 10, inclusive, are ascertained.

**JURISDICTION & VENUE:**

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

5. Pursuant to pendant jurisdiction, an attendant and related cause of action, arising from the same nucleus of operative facts and arising out of the same transactions, is also brought under California's Unruh Civil Rights

1 Act, and the California Disabled Persons Act, which acts expressly  
2 incorporate the Americans with Disabilities Act.

3 6. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is  
4 founded on the fact that the real property which is the subject of this action  
5 is located in this district and that Plaintiff's cause of action arose in this  
6 district.

7  
8 **FACTUAL ALLEGATIONS:**

9 7. The Plaintiff went to the Store in June of 2014, to shop.

10 8. The Store is a facility open to the public, a place of public  
11 accommodation, and a business establishment.

12 9. Parking spaces are one of the facilities, privileges and advantages  
13 offered by defendants to their customers at the Store.

14 10. Unfortunately, although parking spaces are one of the facilities  
15 available to patrons of the business, there is not a single van-accessible  
16 handicap parking space available for disabled persons who drive vans.

17 11. On information and belief, plaintiff alleges that a fully compliant van-  
18 accessible parking space once existed at this location. The accessible parking  
19 space designed for vans has faded beyond recognition, been paved over, or  
20 been removed from reserved status.

21 12. Defendants have no policy or procedure in place to make sure that the  
22 parking spaces remain compliant and suitable for disabled customers.

23 13. Additionally, the handicap parking stall and access aisles are not level  
24 with each other because there is a built up curb ramp that runs into the  
25 access aisle and parking stall. This results in slopes greater than 2%.

26 14. The defendants have failed to maintain in working and useable  
27 condition those features required to provide ready access to persons with  
28 disabilities.

1       15. The plaintiff personally encountered these problems. This inaccessible  
2 condition denied the plaintiff full and equal access and caused him difficulty  
3 and frustration.

4       16. Plaintiff would like to return and patronize the Store but will be  
5 deterred from visiting until the defendants cure the violations.

6       17. Additionally, on information and belief, the plaintiff alleges that the  
7 failure to remove these barriers was intentional because: (1) these particular  
8 barriers are intuitive and obvious; (2) the defendants exercised control and  
9 dominion over the conditions at this location and, therefore, the lack of  
10 accessible facilities was not an “accident” because had the defendants  
11 intended any other configuration, they had the means and ability to make the  
12 change.

13  
14 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**  
15 **WITH DISABILITIES ACT OF 1990** (On behalf of plaintiffs and against  
16 all defendants (42 U.S.C. section 12101, et seq.)

17       18. Plaintiff repleads and incorporates by reference, as if fully set forth  
18 again herein, the allegations contained in all prior paragraphs of this  
19 complaint.

20       19. Under the ADA, it is an act of discrimination to fail to ensure that the  
21 privileges, advantages, accommodations, facilities, goods and services of  
22 any place of public accommodation is offered on a full and equal basis by  
23 anyone who owns, leases, or operates a place of public accommodation. See  
24 42 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows:

- 25           a. A failure to make reasonable modifications in policies, practices,  
26           or procedures, when such modifications are necessary to afford  
27           goods, services, facilities, privileges, advantages, or  
28           accommodations to individuals with disabilities, unless the

1 accommodation would work a fundamental alteration of those  
2 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).

3 b. A failure to remove architectural barriers where such removal is  
4 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are  
5 defined by reference to the ADAAG, found at 28 C.F.R., Part  
6 36, Appendix “D.”

7 c. A failure to make alterations in such a manner that, to the  
8 maximum extent feasible, the altered portions of the facility are  
9 readily accessible to and usable by individuals with disabilities,  
10 including individuals who use wheelchairs or to ensure that, to  
11 the maximum extent feasible, the path of travel to the altered  
12 area and the bathrooms, telephones, and drinking fountains  
13 serving the altered area, are readily accessible to and usable by  
14 individuals with disabilities. 42 U.S.C. § 12183(a)(2).

15 20. Any business that provides parking spaces must provide handicap  
16 parking spaces. 1991 Standards § 4.1.2(5); 2010 Standards § 208. One in  
17 every eight of those handicap parking spaces but not less than one must be a  
18 “van” accessible parking space, *i.e.*, having an eight foot access aisle. 1991  
19 Standards § 4.1.2(5)(b). Under the 2010 Standards, one in every six  
20 accessible parking spaces must be van accessible. 2010 Standards § 208.2.4.

21 21. Here, the lack of a van-accessible handicap parking space is a  
22 violation of the law.

23 22. Under the 1991 Standards, parking spaces and access aisles must be  
24 level with surface slopes not exceeding 1:50 (2%) in all directions. 1991  
25 Standards § 4.6.2.

26 23. Here, the access aisle is not level and has a ramp taking up part of the  
27 access aisle. Under the 2010 Standards, access aisles shall be at the same  
28 level as the parking spaces they serve. Changes in level are not permitted.

1 2010 Standards § 502.4.

2 24. A public accommodation must maintain in operable working  
3 condition those features of its facilities and equipment that are required to be  
4 readily accessible to and usable by persons with disabilities. 28 C.F.R. §  
5 36.211(a).

6 25. Here, the failure to ensure that the accessible parking space was  
7 available and ready to be used by the plaintiff is a violation of the law.

8  
9 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH**  
10 **CIVIL RIGHTS ACT** (On behalf of plaintiffs and against all defendants)  
11 (Cal Civ § 51-53)

12 26. Plaintiff repleads and incorporates by reference, as if fully set forth  
13 again herein, the allegations contained in all prior paragraphs of this  
14 complaint.

15 27. Because the defendants violated the plaintiffs' rights under the ADA,  
16 they also violated the Unruh Civil Rights Act and are liable for damages.  
17 (Civ. Code § 51(f), 52(a).)

18 28. Because the violation of the Unruh Civil Rights Act resulted in  
19 difficulty, discomfort or embarrassment for the plaintiffs, the defendants are  
20 also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code §  
21 55.56(a)-(c).)

22  
23 **III. THIRD CAUSE OF ACTION: VIOLATION OF THE**  
24 **CALIFORNIA DISABLED PERSONS ACT** (On behalf of plaintiffs and  
25 against all defendants) (Cal Civ. § 54-54.8)

26 29. Plaintiff repleads and incorporates by reference, as if fully set forth  
27 again herein, the allegations contained in all prior paragraphs of this  
28 complaint.

1 30. Because the defendants violated the plaintiff's rights under the ADA,  
2 they also violated the Disabled Persons Act and are liable for damages. (Civ.  
3 Code § 54.1(d), 54.3(a).)

4 31. Because the violation of the Disabled Persons Act resulted in  
5 difficulty, discomfort or embarrassment for the plaintiffs, the defendants are  
6 also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code §  
7 55.56(a)-(c).)

8  
9 **IV. FOURTH CAUSE OF ACTION: NEGLIGENCE** (On behalf of  
10 plaintiff and against all defendants)

11 32. Plaintiff repleads and incorporates by reference, as if fully set forth  
12 again herein, the allegations contained in all prior paragraphs of this  
13 complaint.

14 33. The Defendants had a general duty and a duty arising under the  
15 Americans with Disabilities Act and the Unruh Civil Rights Act and  
16 California Disabled Persons Act to provide safe, convenient, and accessible  
17 facilities to the plaintiffs. Their breach of this duty, as alleged in the  
18 preceding paragraphs, has caused injury and damage as alleged above.

19  
20 **PRAYER:**

21 Wherefore, Plaintiff prays that this court award damages and provide  
22 relief as follows:

23 1. For injunctive relief, compelling defendants to comply with the  
24 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the  
25 Plaintiffs are not invoking section 55 of the California Civil Code and is not  
26 seeking injunctive relief under the Disabled Persons Act at all.

27 2. Damages under the Unruh Civil Rights Act and/or the California  
28 Disabled Persons Act which damages provide for actual damages and a

1 statutory minimum of \$4,000. Note: a plaintiff cannot recover under both  
2 acts, simultaneously, and an election will be made prior to or at trial.

3 3. Reasonable attorney fees, litigation expenses and costs of suit,  
4 pursuant to 42 U.S.C. § 12205; Cal. Civ. Code §§ 52 and 54.3.

5 Dated: July 27, 2014

CENTER FOR DISABILITY ACCESS

6  
7 By: 

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9 Mark Potter, Esq.  
Attorneys for Plaintiff  
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